

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CARIDAD ST. GERMAIN,

Plaintiff,

- against -

**VERIFIED COMPLAINT  
AND JURY DEMAND**

OTTO FERMIN,

Docket No.: 07 CIV 3766 (DAB)

Defendant.

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Plaintiff, CARIDAD ST. GERMAIN by her attorneys, LOSCALZO & LOSCALZO, P.C. complaining of the defendant alleges as follows:

1. CARIDAD ST. GERMAIN, resides at 4427 Wilson, Montreal, Quebec, Canada H4A2V3, and is a domiciliary of Canada.

2. Defendant OTTO FERMIN ("FERMIN") resides at 607 West 180<sup>th</sup> Street, Apt. 41, New York, New York 10033, and is a domiciliary of the State of New York, County of New York.

3. There is a complete diversity of citizenship between plaintiff and the defendant in this matter. The amount and dispute in this matter exclusive of interest and costs, exceeds the sum of \$75,000.00. Therefore, this Court has jurisdiction over this dispute by virtue of 28 U.S.C. § 1332.

4. CARIDAD ST. GERMAIN has sustained a serious injury as defined by New York Insurance Law § 5102.

5. Upon information and belief, at all times hereinafter mentioned, defendant, FERMIN, was the owner of a 1996 Lincoln motor vehicle bearing New York license Plate no. T460514C (the "Lincoln").

6. Upon information and belief, at all times hereinafter mentioned, defendant, FERMIN, was the operator of the Lincoln.

7. Upon information and belief, at all times hereinafter mentioned, University Avenue at or near Burnside Avenue, Bronx, New York was and still is a public roadway.

8. Upon information and belief, that on or about March 9, 2007 at approximately 9:44 A.M., the Lincoln, owned and operated by FERMIN, was being operated on University Avenue at or near Burnside Avenue, Bronx, New York.

9. Upon information and belief, that on or about March 9, 2007, at approximately 9:44 A.M., the plaintiff, CARIDAD ST. GERMAIN was lawfully a pedestrian on University Avenue at or near Burnside Avenue, Bronx, New York.

10. That the Lincoln owned and operated by FERMIN, came into violent contact with plaintiff CARIDAD ST. GERMAIN.

11 Upon information and belief, the aforesaid contact took place on University Avenue at or near Burnside Avenue, Bronx, New York.

12 Upon information and belief, that as a result of the aforementioned accident, plaintiff, CARIDAD ST. GERMAIN sustained injuries.

13. Defendant was negligent in causing and permitting the Lincoln to come into violent contact with plaintiff, CARIDAD ST. GERMAIN; in driving carelessly; in proceeding at an excessive rate of speed; in failing to have the Lincoln under proper management, operation and control; in failing to provide and/or equip and/or

make use of and/or keep in proper working order and/or permit timely use of adequate and efficient brakes and/or braking mechanisms; in failing to make prompt, proper and timely use of the steering mechanism of the Lincoln; in failing to maintain the braking and steering mechanism of the Lincoln in proper and adequate condition or repair; in failing to observe the road; in violating those rules, regulations and statutes in such cases made and provided and in further violating the provisions of the Vehicle and Traffic Law and the traffic regulations of the City and State of New York; and in failing to avoid contact. Plaintiff, CARIDAD ST. GERMAIN relies on the Doctrine of "Last Clear Chance".

14. Upon information and belief, the restrictions upon joint and several liability contained in Article 16 of the CPLR do not apply, as this claim falls within the exception contained in Section 1602(6), dealing with the negligent operation of a motor vehicle.

15. That the occurrence and the subsequent injuries to plaintiff, CARIDAD ST. GERMAIN, were caused solely and exclusively due to the negligence of the defendant without any conduct on the part of the plaintiff contributing thereto.

16. That as a result of the aforesaid occurrence, the plaintiff, CARIDAD ST. GERMAIN, sustained serious and severe permanent personal injuries to her body and mind, severe shock to her nerves and nervous system and extreme and severe physical pain and agony and mental anguish; the plaintiff was otherwise

rendered sick, sore, lame and disabled; the plaintiff was confined to hospital, bed and home for a considerable period of time subsequent to the said occurrence; the plaintiff was and will be incapacitated from attending her usual duties and functions; the plaintiff was and will be compelled to submit to medical and hospital aid, care and attention in order to be treated for her injuries.

17. That by reason of the foregoing, plaintiff, CARIDAD ST. GERMAIN, has been damaged in the sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter.

**WHEREFORE**, Plaintiffs, CARIDAD ST. GERMAIN and TAHANI FARDOUS demand judgment against the defendants, in the sum exceeding the jurisdiction limits of this court in the amount to be determined at trial.

Dated: New York, New York  
May 10, 2007

LOSCALZO & LOSCALZO, P.C.  
Attorneys for Plaintiff

BY: /s/  
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(212) 505-9080  
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**DEMAND FOR JURY**

PURSUANT TO RULE 38 of the Federal Rules of Civil Procedure,  
Plaintiff, CARIDAD ST. GERMAIN demands trial by jury in this action  
of all issues triable by jury in this matter.

Dated: New York, New York  
May 8, 2007

LOSCALZO & LOSCALZO, P.C.  
Attorneys for Plaintiff

BY: \_\_\_\_\_/s/\_\_\_\_\_

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